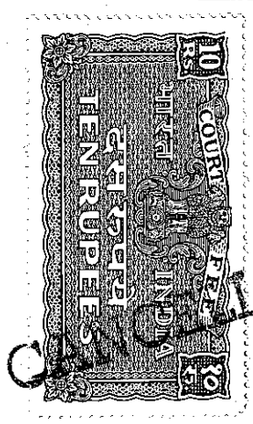

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A.No. 501 /2002

APPELLANT : Oriental Insurance Company,
Defendant No.3 Raipur through Divisional Manager, Bilaspur
Bilaspur (C.G.)

-Versus –

RESPONDENT: 1. Khedi Bai,
Claimant No.1 Wd/o Late Ganga Ram Dewangan,
Aged about 55 years,

RESPONDENT: 2. Hari Shankar,
Claimant No.2 S/o Late Ganga Ram Dewangan,
Aged about 23 years.
Both R/o Baronda Bazar,
P.S. and Tehsil- Mahasamund,
District – Mahasamund.

RESPONDENT: 3. Kanhaiya Lal,
Defendant No.1 S/o Arjun Yadav,
Driver of Truck No. M.P. 23-G/7270,
R/o Village Belsonda , P.S. and
District – Mahasamund(C.G.)

-Driver-

RESPONDENT: 4. Ghanshyam Chandrakar,
Defendant No.2 S/o Lakhan Lal Chandrakar,
Owner of Truck No. M.P. 23-G/7270,
R/o Village Belsonda , P.S. and
District – Mahasamund(C.G.)

-Owner-

P. R. No. 1369/02
Presented by Shri ... Advocate
dated 4.12.02

APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक M.A.501 सन् 2002

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

30.03.2005

Shri Prashant Jayaswal, Sr.Advocate with Shri Vinay Pandey, counsel for the appellant/Insurance Company.

Shri J.A.Lohani, counsel for respondent Nos.1 and 2.

Respondent Nos. 3 and 4 has been served with the summons, even then none appears for them.

With the consent of the parties, the appeal is finally heard.

This misc. appeal has been preferred by the appellant/Insurance Company against the impugned order dated 27.02.2002 passed by Ist Additional Motor Accident Claims Tribunal, Mahasamund in Claim Case No. 12/2001 whereby an award of Rs.80,000/- has been passed in favour of the respondent payable jointly and severally and the appellant/Insurance Company has been made liable to satisfy the Award.

The only grievance of the appellant is that the Claims Tribunal even after recording a finding in paragraph 23 of the Award that the driver of the vehicle involved in the accident on the relevant date, did not have valid driving licence, has fastened the liability upon the Insurance Company instead of recovering the same from the owner of the vehicle.

I have gone through the impugned Award passed by the Claims Tribunal where the Tribunal on the basis of the statement of Shri Vinay Rathor, employee of the Regional Transport Office, Raipur, has arrived to the conclusion that the driver of the vehicle, respondent No.3 herein, was not having valid driving licence at the time of accident and thus, as per provisions of Section 149 (2) (a) (ii) of the Motor Vehicles Act, the appellant / Insurance Company was not liable to pay the

XI-HC-22

(20)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक M.A. 501 सन् 2002

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

compensation as the vehicle in question at the time of accident was driven by a driver who was not having valid driving licence and as such, the vehicle was being used in the breach of policy condition.

However, learned counsel for the claimants/respondent Nos. 1 and 2 relying upon the judgment reported in ***2004 AIR SCW 663*** in the matter of ***National Insurance Co. Ltd. Vs. Swaran Singh and others*** submits that initially the liability to satisfy the order of Award lies upon the Insurance Company who can recover the entire amount paid to third party on behalf of insured and the Insurance Company can not shake off its liability to pay the compensation only by saying that at the relevant point of time the vehicle was driving by a person having no licence. Therefore, the Insurance Company cannot be absolved from the liability of satisfying the Award.

However, as per binding judgments of the Hon'ble Apex Court referred above, the appeal is allowed and the Award is modified to the extent that the appellant /Insurance Company shall satisfy the Award at the first instance and thereafter, the appellant shall be entitled to recover the awarded amount from the owner or driver thereof and the insurer is liable to be reimbursed by the insured for the amount which has been compelled to pay to the third party under the Award of the Tribunal.

With the aforesaid modification in the Award, the appeal is disposed of but without any order as to costs.

Sd/-
DHIRENDRA MISHRA
Judge

(पीछे देखिये)